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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re K.G. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH
AND HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

M.G.,

Defendant and Appellant.

D076888/Consolidated with
D077246

(Super. Ct. No. EJ4161A, B)

APPEALS from orders of the Superior Court of San Diego County, Gary M. Bubis, Judge. Affirmed.

Jacob I. Olson, under appointment by the Court of Appeal, for Objector and Appellant.

Thomas E. Montgomery, County Counsel, Caitlin E. Rae, Chief Deputy County Counsel, and Emily Harlan, Deputy County Counsel, for Plaintiff and Respondent.

M.G. (Mother) appeals from orders denying her Welfare and Institutions Code section 388 modification petition and subsequently terminating her parental rights to her sons, K.G. and A.K., pursuant to section 366.26.¹ Mother contends the juvenile court: (1) abused its discretion by summarily denying her section 388 petition because she made a prima facie showing that there had been a substantial change in circumstances and her requested change to the prior order was in her sons' best interests; and (2) erred by finding the beneficial parent-child relationship exception did not apply to preclude termination of her parental rights (§ 366.26, subd. (c)(1)(B)(i)). Finding no error, we affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In 2013, Mother and F.K. (Father) began a relationship that led to K.G.'s birth in 2014 and A.K.'s birth in 2016. During their relationship, Mother experienced domestic violence and began using methamphetamine.

In May 2017, while serving a warrant at Mother's and Father's home, law enforcement officers smelled marijuana and saw Father smoking it. Officers found methamphetamine pipes in the garage (accessible to the children), an open bottle of marijuana and a bag of methamphetamine in a bedroom dresser drawer, and a child's sippy cup that had been modified to serve as a methamphetamine pipe. Officers also found stolen property, stolen identification cards, and an assault weapon in the home. Mother and Father were arrested for burglary, child endangerment, felony identity theft, and possession of stolen property.

Mother admitted she smoked methamphetamine on a daily or weekly basis, and further admitted allowing multiple known drug users into the

¹ All statutory references are to the Welfare and Institutions Code.

family home. Father smoked methamphetamine daily, and he drove the children to daycare every day. Describing the domestic violence she suffered, Mother stated that Father punched her, broke her front teeth, choked her, and pushed her. Their children had witnessed multiple incidents of abuse, and Mother had not previously reported the prior incidents.

In late May, the San Diego County Health and Human Services Agency (Agency) filed section 300, subdivision (b) petitions alleging that A.K. and K.G. (then ages one and two years old, respectively) had suffered, or there was a substantial risk they would suffer, serious physical harm or illness as a result of: (1) Mother's and Father's failure or inability to supervise or protect them adequately because the children were exposed to their domestic violence; and (2) Mother's and Father's inability to provide regular care for the children because of their substance abuse. At the detention hearing, the court found the Agency had made a prima facie showing supporting its petitions and detained the children in the home of a relative. At their jurisdiction and disposition hearing, the court found the petitions' allegations were true, declared the children dependents of the court, removed them from the custody of Mother and Father, placed them in the home of their paternal aunt and uncle, and ordered reunification services for Mother.² The court also issued a restraining order protecting Mother and the children from Father until August 2020, except for any court-ordered visitation with the children. Mother's case plan included individual counseling, a domestic violence prevention program, a parenting education program, an outpatient substance abuse treatment program, random drug testing, and Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings. The court also

² Because Father was incarcerated at the time of the hearing, the court did not order any reunification services or visits for him.

ordered that Mother be allowed two supervised visits each week with the children.

In its six-month review report, the Agency stated that Mother had tested positive twice in September 2017. She left an inpatient substance abuse treatment program shortly after entering it, then enrolled in an outpatient program in October. Mother told the Agency that she was participating in a Buddhist 12-step program and had a sponsor. She began individual counseling at the end of June, but stopped after her September relapse. Beginning in August, Mother attended four domestic violence group sessions and then missed 10 sessions. Her group facilitator reported that Mother rarely participated actively during sessions and rarely demonstrated an awareness of her protective issues without minimizing or denying them. Mother completed her parenting education and regularly visited the children. By December, the Agency approved unsupervised visits with the children for Mother. At the six-month review hearing in January 2018, the court ordered that an additional six months of reunification services be provided to Mother.

In its 12-month review report, the Agency stated that in February 2018 Mother was discharged from her third substance abuse treatment program for tardiness. She postponed her enrollment in a new program until she obtained her records from her previous program. In the interim, she submitted negative drug tests and participated in AA/NA meetings. Mother began individual counseling with Dr. Vanessa Rodriguez, who had been her domestic violence group facilitator. Mother had attended nine group sessions and missed 19 sessions. In April, Mother's visitation was expanded to allow her to care for the children from Friday through Tuesday. Mother struggled with maintaining the children's routine with service providers and the children exhibited increased behavioral issues. In June, Mother began

attending domestic violence group sessions with a new facilitator. At the 12-month review hearing in July 2018, the court ordered that an additional six months of reunification services be provided to Mother.

In its 18-month review report, the Agency stated that Mother did not appear for a July 18, 2018 drug test and then tested positive for methamphetamine on July 20. Mother stated she relapsed just once and her children were not present at the time. Thereafter, Mother enrolled in a fourth substance abuse treatment program. In August, an Agency social worker learned from the children's daycare provider that different men were picking up the children. The daycare provider also suspected the children were being physically abused. K.G. had told her that he was spanked with a long, black stick with a handle by "Derrick" and "Devin" for climbing on the stairs and not bringing "dad juice" (which the provider assumed meant beer). K.G. also told her that Devin grabbed Mother's arm and pulled her out of their home and then officers arrived. K.G. also reported that when he and A.K. cussed, Mother placed hot sauce in their mouths. The provider also noted that the children's behavior had been declining and they began hitting the other children at the daycare. The provider also reported that Mother was slurring her words and had stopped communicating with the provider.

K.G. also told his aunt that Derrick and Devin were hitting Mother. When A.K. told his aunt that his butt hurt, K.G. stated that it was because of spanking. The aunt learned from her brother that Derrick was Mother's boyfriend, had assaulted Mother at a casino, and had a criminal record for attempted homicide and domestic violence.

Based on that information, the Agency social worker immediately changed Mother's visitation with the children to supervised visits only. When the social worker informed Mother of that change, Mother confirmed

that Derrick was her boyfriend, but denied any domestic violence in their relationship.³ Mother also denied that K.G. was spanked by either Derrick or Devin, who was Derrick's adult son and also Mother's roommate.

Mother subsequently informed Derrick he could no longer be around her children. In October, when Derrick arrived at her home smelling of liquor, Mother told him to leave. Using a key to her home, Derrick entered the home, yelled at Mother, strangled her, and hit her head against the wall, causing her to pass out. When she awoke, she left the house without shoes and went to "her program." She did not call the police, but obtained a temporary restraining order against Derrick later that day. The following day, Derrick returned to her home, prompting Mother to escape through a window and call the police. However, Derrick had fled by the time the police arrived and was not apprehended. Three days later, Derrick arrived at her home again, claiming Mother owed him \$700. Derrick grabbed Mother by her hair, dragged her 25 feet, and then kicked her. After escaping, Mother had a neighbor call the police. Again, Derrick fled before the police arrived. When Derrick returned later that night, Mother hid in a closet and called the police, but he fled again.

Three days later, hearing Derrick's car approach, Mother left with a friend to a casino because it had surveillance. However, Derrick followed her there and pushed her to the floor. Derrick was escorted out and the police were called. Four days later, Derrick broke into Mother's home and followed her out of the home. The police arrested Derrick. A criminal protective order was subsequently issued protecting Mother from Derrick.

³ However, in October Mother told law enforcement officers that Derrick had been violent on at least 50 occasions and had strangled her several times.

In late October, the Agency social worker discussed the recent incidents of domestic violence with Mother. Mother told her that she and Derrick had stopped dating in December 2017.⁴ Mother stated she initially kept Derrick as a friend, but when her visitation with the children became supervised in August 2018, she told him they could not be friends anymore.

In November, after his release from custody, Derrick arrived at the home of Mother's friend, Jim, and strangled Mother until she passed out. When she awoke the following morning, she was in a casino hotel room, had a black eye, and had difficulty swallowing. Mother went to a hospital for treatment four days later, causing the nurse to report the incident to the police.

In December, Derrick was arrested and incarcerated for a felony warrant. In February 2019, after his release, Derrick arrived at Mother's home. She immediately fled and stayed at a hotel until Derrick was located and then incarcerated for violating his probation.

After her visitation with the children returned to supervised visits in August 2018, Mother's visits became inconsistent. When she visited the children, Mother was attentive and affectionate with them. In January 2019, Mother was discharged from the family visitation center for missing five visits without calling to cancel them. In January, Mother also completed a parenting education program.

Although Mother tested negative for drugs and alcohol during this period, she had not provided the Agency with proof of her attendance at AA/NA meetings. Mother had missed three domestic violence group sessions

⁴ However, Mother had previously told the police that she and Derrick had been in a sexual relationship for one year and had only recently ended their relationship.

in August 2018, had not shown her ability to act in a protective role as a parent, and was subsequently discharged from the program in November for her failure to attend sessions. Mother also missed five or six weeks of individual counseling with her new therapist, Mark Guynn. Guynn stated his opinion that Mother's risk of relapsed behaviors that could impact her children was moderate to high based on the continuing threat posed by Derrick.

At the contested 18-month review hearing in January and February 2019, the court terminated Mother's reunification services and set a section 366.26 hearing to select and implement a permanent plan for K.G. and A.K.

In its June 2019 section 366.26 report, the Agency recommended that the court terminate Mother's and Father's parental rights and select a permanent plan of adoption for K.G. and A.K. Between January and March 2019, Mother attended four domestic violence group sessions, missed eight sessions, and was discharged from the program in March. After six weeks of not visiting or calling the children, Mother visited them 11 times from late March through early June. The visits were generally positive. K.G.'s and A.K.'s caregivers were committed to adopting them and had participated in services to help stabilize and regulate their aggressive behaviors. K.G. stated he felt happy about living with his caregivers and would be happy even if he did not visit Mother anymore. A.K. also stated he was happy living with his caregivers. However, when asked who he wanted to live with forever, A.K. replied he wanted to live with Mother and would feel sad if he could not visit with her anymore.

Mother requested an evidentiary section 366.26 hearing and stated she intended to file a section 388 petition. In August 2019, Mother filed a

section 388 petition requesting that the court change its February 2019 18-month review order by placing the children with her or continuing the section 366.26 hearing to allow further reunification. Mother's petition alleged that her circumstances had changed because since that prior order she had completed an outpatient substance abuse treatment program and completed a domestic violence program. She also had resumed individual counseling in April with Dr. Rodriguez two to four times per week. Also, in March, Derrick had been sentenced to a four-year prison term. Mother further alleged that her requested changes were in the children's best interest because she loved them and, as their mother, she was the "one who can heal, nurture and remove" their emotional and psychological trauma that she caused them. She asserted: "[O]nly I can heal that trauma." She also alleged that the bond between the children and her was indestructible. She acknowledged that she had blamed Father, his family, Derrick, her family and friends, her attorneys, drugs, bulimia, bad luck, and the system to avoid accepting responsibility for her actions. Mother attached to her petition a letter from Dr. Rodriguez, which stated that Mother had gained an enormous amount of insight after her reunification services had been terminated, was remorseful, and had accepted responsibility for failing to protect her children from domestic violence. Dr. Rodriguez believed that Mother would be able to protect and emotionally support herself and the children if she continued engaging in individual counseling. However, Dr. Rodriguez had never observed Mother with the children.

In its October addendum report, the Agency continued to recommend that the children not be returned to Mother's care and instead that her parental rights be terminated and a permanent plan of adoption be selected. The Agency had learned that Mother was arrested in August 2018 for driving

under the influence with a suspended license. Mother's visitation coordinator reported that she appeared to be " 'back tracking' " by feeding into K.G.'s negative behaviors. Mother stated that she was now living alone after asking two roommates to move out for smoking marijuana. She recently became employed at a furniture company and also received money from her family's inheritance and her friend. In September, Mother had a negative drug test. Although Mother told an Agency social worker in September that Derrick was not around the children when they were in her care, she contradicted herself in other communications with the Agency and her therapist.⁵ The Agency recommended against placing the children with Mother because although she had improved her stability, she nevertheless had a history of multiple drug relapses and exposing her children to domestic violence and she continued to deny the nature of her relationship with Derrick and minimize what the children had witnessed and experienced. The Agency believed Mother still had a long road ahead of her to recover from the deeply rooted complex issues and trauma in her life. The Agency stated: "[Mother] is in the process of *changing* and has not fully developed the parental protective capacities required to parent children with [K.G.'s and A.K.'s] specific needs [regarding exposure to domestic violence]." (Italics added.) The Agency believed it was in the children's best interests to continue living with their current caregivers who had consistently provided them with safety, stability, structure, and permanency.

⁵ Mother told another Agency social worker in August 2018 that Derrick had told the children he would have gotten his "ass beat" when he was a child for not listening, thus admitting Derrick was around the children. Also, in early 2019, Mother told Dr. Rodriguez that Derrick had been around the children about seven times and was loud and obnoxious.

At a hearing on October 8, 2019, the court found that Mother had failed to make a prima facie showing on her section 388 petition of changed (as opposed to merely changing) circumstances, or that returning the children to her care would be in their best interests. Accordingly, the court summarily denied her petition. Mother timely filed a notice of appeal challenging that order in instant Case No. D076888.

In November 2019, Mother filed a second section 388 petition requesting that the court change its prior order and place the children with her with family maintenance services. Mother again alleged that she had completed a substance abuse treatment program and a domestic violence program and was engaging in individual counseling. She also alleged that she was clean and sober.

In its November addendum report, the Agency stated that since the end of March, Mother had 34 visits with the children, of which 12 were observed by an Agency social worker. Mother acted appropriately during the visits and consistently demonstrated a parental role. Mother's September 2019 hair follicle drug test showed she had not used any drugs for the past 90 days. Father reported that Mother had reached out to him on Facebook and he had visited her at her home. The Agency believed Mother was once again demonstrating a pattern of pursuing unhealthy and abusive relationships because she reached out to Father and told the Agency she would like the restraining order against him lifted because he was not a violent person.⁶

At a hearing on January 16, 2020, the court summarily denied Mother's second section 388 petition, finding that she had made a prima facie showing

⁶ Mother subsequently denied telling an Agency social worker that Father was not a dangerous person.

that her circumstances had changed, but not that it would be in the children's best interests to be returned to her care.⁷

At the contested section 366.26 hearing on January 31, 2020, the court received in evidence the Agency's section 366.26 report and addenda thereto. The court also heard the testimony of an Agency social worker who stated that she had no concerns regarding the children's safety in the home of their caregivers who had cared for them for over two years. She testified that the children were generally adoptable. She also stated that Mother had been more consistent in visiting the children over the past year and that those visits were generally positive.

Mother presented documentary evidence and testified regarding her care of the children before their dependency and her visits with them during their dependency. She testified that in August 2018 her visitation returned to supervised visits but she failed to visit or call the children because she was afraid of Derrick. She stated she resumed visiting and calling the children weekly after Derrick was incarcerated in March 2019. She testified that after her reunification services were terminated, she completed an outpatient substance abuse treatment program and a domestic violence program and participated in individual counseling twice a week.

Counsel for the children presented documentary evidence, including visitation logs showing that Mother did not show up for a scheduled visit on January 2, 2020, and had not called in advance to cancel that visit. A.K. had

⁷ Mother did not appeal the January 16, 2020 order summarily denying her second section 388 petition. We therefore do not address the merits of the second petition. Because we find no error in denying the Mother's first section 388 petition, we also do not address the Agency's claim that any error in denying that petition was harmless given Mother's failure to challenge the summary denial of her second petition.

not wanted to attend that visit and both children ran away from the monitor screaming when it was time to leave. A.K. also did not want to attend his visit with Mother on January 23, 2020.

After considering the evidence and hearing arguments of counsel, the court found both children were generally adoptable and none of the exceptions in section 366.26, subdivision (c) applied to preclude termination of Mother's and Father's parental rights. Accordingly, the court terminated their parental rights and selected adoption as the children's permanent plan. Mother timely filed a notice of appeal challenging that order in instant Case No. D077246. On March 27, 2020, we granted the Agency's motion to consolidate Case No. D076888 with Case No. D077246.

DISCUSSION

I

Summary Denial of Mother's First Section 388 Petition

Mother contends the juvenile court abused its discretion by summarily denying her first section 388 petition. In particular, she argues the court erred by finding that she had not submitted sufficient evidence to make a prima facie showing that her circumstances had changed since the prior order and that her requested changes to that order were in the children's best interests.

A. Governing Legal Principles and Standard of Review

Section 388, subdivision (a) provides: "Any parent or other person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court or in which a guardianship was ordered pursuant to Section 360 for a hearing to change, modify, or set aside any

order of court previously made or to terminate the jurisdiction of the court. The petition . . . shall set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order or termination of jurisdiction.” The burden of proof is on the moving party to show, by a preponderance of the evidence, that there are changed circumstances or new evidence and that the requested change would be in the child’s best interest. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*); *In re G.B.* (2014) 227 Cal.App.4th 1147, 1157 (*G.B.*); *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

In support of a section 388 petition, the moving party must show *changed*, not merely changing, circumstances. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47 (*Casey D.*); *In re Alayah J.* (2017) 9 Cal.App.5th 469, 482 (*Alayah J.*)). “A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child’s best interests. [Citation.] ‘ “[C]hildhood does not wait for the parent to become adequate.” ’ ” (*Casey D.*, at p. 47, quoting *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) A section 388 petition must be liberally construed in favor of its sufficiency. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461 (*Angel B.*)).

The petitioner “need only make a prima facie showing to trigger the right to proceed by way of a full hearing.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310 (*Marilyn H.*)). However, if the petitioner does not meet that threshold showing, the juvenile court in its discretion may deny a request for a section 388 hearing. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415 (*Jasmon O.*)). “The prima facie requirement is not met unless the facts

alleged, if supported by evidence given credit at the hearing, would sustain a favorable decision on the petition.” (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806 (*Zachary G.*.) Alternatively stated, a prima facie case is made on a section 388 petition if its allegations show section 388’s two elements are supported by probable cause and need not show a probability of prevailing on the petition. (*G.B., supra*, 227 Cal.App.4th at p. 1157; *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432.) The petition’s allegations must be specific regarding the evidence to be presented and must not be conclusory. (*Alayah J., supra*, 9 Cal.App.5th at p. 478.) In deciding whether a prima facie showing has been made, the court may consider the entire factual and procedural history of the case. (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 616 (*Mickel O.*.) A summary denial of a section 388 petition does not violate due process. (*Angel B., supra*, 97 Cal.App.4th at pp. 459-460.)

The decision whether to grant or deny a section 388 petition is within the discretion of the juvenile court. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; *In re Y.M.* (2012) 207 Cal.App.4th 892, 920.) Likewise, a decision to summarily deny a section 388 petition without an evidentiary hearing is within the juvenile court’s discretion. (*Angel B., supra*, 97 Cal.App.4th at p. 460; *Zachary G., supra*, 77 Cal.App.4th at p. 808.) On appeal, a reviewing court will not disturb a discretionary decision by the juvenile court unless it abuses its discretion by making an arbitrary, capricious, or patently absurd determination. (*Stephanie M., supra*, 7 Cal.4th at p. 318; *In re Marcelo B.* (2012) 209 Cal.App.4th 635, 642.) The appellant has the burden on appeal to affirmatively show that the juvenile court abused its discretion. (*In re A.A.* (2012) 203 Cal.App.4th 597, 612.)

B. *Analysis of Changed Circumstances Requirement*

In her first section 388 petition, Mother alleged there were changed circumstances since the court's February 2019 order terminating her reunification services and setting a section 366.26 hearing because she had completed an outpatient substance abuse treatment program and a domestic violence program and had resumed individual counseling. She also alleged her weekly visits with the children had been consistent and positive, she had maintained a safe and secure residence since January 2019 that was ready to care for the children, and Derrick had been sentenced to a four-year prison term, eliminating the risk he posed to her and the children.

We conclude the court reasonably found that the allegations in Mother's section 388 petition, even if proven to be true, showed, at most, *changing*, and not changed circumstances. As the court noted when denying her petition, Mother exposed the children to significant trauma and, although she completed some services after the 18-month review hearing, her progress was not sustained and substantial enough to risk destabilizing the children by returning them to her care. The court stated:

“[A.K.] spent two-thirds of his life out of [Mother's] custody. [K.G.] has spent almost half of his life out of [Mother's] custody. 18 months of services to the mother ended in utter chaos. The boys were exposed to a great deal of violence and neglect. . . . [¶]

“Now, I want to indicate clearly that [Mother's] made some changes in her life. . . . [T]here's *changing circumstances*. But . . . since 17 years old she's been struggling with multiple issues. There's been substance abuse issues by her own admission. There's been rejection, exploitation, abandonment.

“She's clearly *making progress*, but, again, we're still at supervised visitation at this point in time. Immediate return to [Mother] would totally destabilize these

emotionally wounded children. Returning these children to the custody of [Mother] would essentially, in my opinion, be an experiment to see if this is going to work out; and, therefore, *I can't find by even a prima facie showing there's been changed circumstances*, and it's clearly not in the best interest [of the children] at this point in time." (Italics added.)

The court did not abuse its discretion in denying Mother's petition based on this determination that her circumstances had not "changed" as required by section 388, but were instead only changing. (Cf. *Casey D.*, *supra*, 70 Cal.App.4th at p. 47 [evidence showed, at most, changing circumstances]; *Alayah J.*, *supra*, 9 Cal.App.5th at p. 482 [same]; *Angel B.*, *supra*, 97 Cal.App.4th at p. 460 [court did not abuse its discretion by summarily denying mother's section 388 petition because her allegations and evidence did not show she was ready to care for her child despite completing residential drug treatment program and parenting classes and obtaining employment].)

Mother's conclusory arguments that her circumstances have changed are insufficient to show the court abused its discretion. There was ample support for the court's ruling. The record supports the court's finding, in effect, that Mother had not demonstrated based on her behavior over a sufficient period of time that she had resolved her domestic violence and substance abuse issues and therefore no longer posed a risk of failing to protect her children. For example, Mother failed to timely disclose to the Agency her abusive and violent relationship with Derrick and her subsequent (and apparently false) denial to the Agency that Derrick was around when she cared for the children. As the Agency argues, even if Mother had gained some new insight into her personal issues, her section 388 petition did not allege facts and submit supporting evidence that, if true, would support a

finding that her *behavior* had sufficiently *changed* over time such that the original protective issues for her children had been resolved. In short, Mother's expression of the insight she had gained was not matched by her actions. As the Agency emphasized in opposing Mother's section 388 petition, Mother had a history of multiple drug relapses and exposing her children to domestic violence and she also continued to deny the nature of her relationship with Derrick and minimize what the children had witnessed and experienced.

In sum, the court properly considered all of the evidence in K.G.'s and A.K.'s dependency cases and reasonably found that Mother's allegations in her section 388 petition and the evidence submitted in support thereof, if true, did not show her circumstances had changed as required by section 388. (*Mickel O.*, *supra*, 197 Cal.App.4th at p. 616.) Accordingly, we conclude the court did not abuse its discretion by finding Mother did not make a prima facie showing that there were changed circumstances and, based thereon, summarily denying her section 388 petition. (*Jasmon O.*, *supra*, 8 Cal.4th at p. 415; *Zachary G.*, *supra*, 77 Cal.App.4th at p. 808; *Angel B.*, *supra*, 97 Cal.App.4th at p. 460.)

C. Analysis of Best Interests Requirement

Mother's section 388 petition alleged that her requested changes to the court's February 2019 order were in the children's best interests. She alleged that she had consistently visited the children throughout their dependency cases. She further alleged the children had bonded with her, looked to her as their mother, and referred to her as "mommy."

In summarily denying Mother's section 388 petition, the court found that her allegations, even if proven true at a hearing, did not show her requested changes were in the children's best interests. As previously noted,

the court concluded that granting Mother's petition "would totally destabilize these emotionally wounded children." The court thus was unable to "find by even a prima facie showing there's been changed circumstances," and instead found returning the children to Mother was "*clearly not in the best interest* [of the children] at this point in time." (Italics added.)

We conclude the court reasonably found that the factual allegations in Mother's section 388 petition, even if proven to be true, did not support a finding that her requested changes were in the children's best interests. (*Mickel O.*, *supra*, 197 Cal.App.4th at p. 616.) The court reasonably could conclude that although the children may have a bond with Mother that was maintained through consistent visits following the termination of her reunification services, Mother nevertheless had not shown the original protective issues had been sufficiently resolved such that it was in their best interests to return to her care rather than remain in the care of their current caregivers, who provided them with a safe and stable home for over two years and sought to adopt them. The court implicitly, and reasonably, found that Mother's allegations and evidence, if true, did not show her requested changes would advance the children's need for permanency and stability. (Cf. *In re J.C.* (2014) 226 Cal.App.4th 503, 526 [after termination of reunification services, parent must show requested order will advance child's need for permanency and stability].) Given Mother's history of relapses, the children's exposure to domestic violence, Mother's minimizing behavior, and the relatively brief period of progress relative to the entire dependency proceeding, the court did not abuse its discretion in rejecting Mother's claim that she was now equipped to protect the children and place their needs ahead of her own. The court instead could reasonably conclude that removing K.G. and A.K. from the home of their caregivers, who provided

stability and permanency, would not serve their best interests. Accordingly, we conclude the court did not abuse its discretion in summarily denying Mother's section 388 petition. (*Jasmon O.*, *supra*, 8 Cal.4th at p. 415; *Zachary G.*, *supra*, 77 Cal.App.4th at p. 808; *Angel B.*, *supra*, 97 Cal.App.4th at p. 460.)

II

Beneficial Parent-child Relationship Exception

Mother contends the juvenile court erred by finding at the section 366.26 hearing that the beneficial parent-child relationship exception under section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude termination of her parental rights.

A. Governing Legal Principles and Standard of Review

The purpose of a section 366.26 hearing is to determine and implement the appropriate permanent plan for a dependent child. (*Marilyn H.*, *supra*, 5 Cal.4th at p. 309.) The juvenile court can choose among three permanent plans: adoption, legal guardianship, and long-term foster care. (§ 366.26, subd. (b).) When a child is adoptable, adoption is the preferred permanent plan unless there are countervailing circumstances or adoption is not in the child's best interest. (*In re Heather B.* (1992) 9 Cal.App.4th 535, 546; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 574 (*Autumn H.*).)

At a section 366.26 hearing, it is the parent's burden to show an exception to termination of parental rights. (*In re Fernando M.* (2006) 138 Cal.App.4th 529, 534; *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.) One exception is when termination of parental rights would be detrimental to the child because the "parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The court must find both: (1) the existence of a

beneficial relationship; and (2) that there is a relationship between the parent and child that “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Alternatively stated, the beneficial parent-child relationship exception “applies when there is a compelling reason that the termination of parental rights would be detrimental to the child.” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395 (*Anthony B.*).)

In making the determination of whether the beneficial parent-child relationship exception applies, the juvenile court “ ‘balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.’ ” (*Anthony B.*, *supra*, 239 Cal.App.4th at p. 397.) Because interaction between a child and his or her parent will generally confer some incidental benefit to the child, the parent must prove the child will benefit to such a degree as to overcome the preference for adoption. (*Ibid.*) For the beneficial parent-child relationship exception to apply, the parent must show, *inter alia*, that the emotional attachment between the child and the parent is of a parental nature rather than one of a friendly visitor or friendly nonparent relative. (*Angel B.*, *supra*, 97 Cal.App.4th at p. 467; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419 (*Beatrice M.*).) Some of the factors the juvenile court should consider when determining whether the parent-child relationship is important and beneficial are: (1) the age of the child; (2) the portion of the child’s life spent

in the parent’s custody; (3) the positive or negative effect of interaction between the parent and the child; and (4) the child’s particular needs. (*Angel B.*, at p. 467.)

“We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child.”

(*Anthony B.*, *supra*, 239 Cal.App.4th at p. 395.)⁸ Under the substantial evidence standard of review, we consider the evidence in the light most favorable to the court’s order, draw all reasonable inferences in support of the court’s findings, and disregard all contrary evidence. (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298 (*S.B.*); *Casey D.*, *supra*, 70 Cal.App.4th at p. 53.) Under the abuse of discretion standard of review, we determine whether the juvenile court’s decision exceeded the bounds of reason, and, in so doing, we do not substitute our view for that of the juvenile court. (*Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.)

B. *Analysis*

Mother asserts the court erred by finding the beneficial parent-child relationship exception did not apply to preclude termination of her parental rights because she shares a strong bond with her children that was maintained through consistent and meaningful visitation and therefore termination of their relationship would be detrimental to them. She argues

⁸ The standard of review that applies to the beneficial parental relationship exception to adoption is currently pending before the California Supreme Court. (*In re Caden C.* (2019) 34 Cal.App.5th 87, 106, review granted July 24, 2019, S255839.) Pending further guidance, we apply the standard described herein.

the benefit to the children of maintaining their relationship with her outweighs any benefit to them of a permanent, adoptive home.

By finding that none of the circumstances in section 366.26, subdivision (c)(1)(B) existed to preclude termination of Mother's parental rights, the court necessarily found that the beneficial parent-child relationship exception under section 366.26, subdivision (c)(1)(B)(i) did not apply. In so finding, the court noted that at the time of the children's removal in May 2017, "their reality was a nightmare of [domestic violence] and drug use and severe risk of physical harm, and that theme carried throughout [their dependency cases]." The court stated that although Mother had "tried really, really hard," she nevertheless chose "to get involved in one of the worst relationships I've ever seen in this court in 20 years. This guy [Derrick] was a terrorist, and put these children at huge, huge risk." Weighing what it considered not a healthy, good relationship between the children and Mother against their stable placement for two and a half years, the court stated it "[wasn't] close" and found the benefits to the children of a stable, permanent adoptive placement outweighed the benefits to them of maintaining their relationship with Mother.

Based on our review of the record, we conclude the court did not err by finding the beneficial parent-child relationship exception did not apply to preclude termination of Mother's parental rights. Assuming arguendo that the court implicitly found Mother had maintained regular contact and visitation with the children and therefore met the first prong of the section 366.26, subdivision (c)(1)(B)(i) exception and that substantial evidence supports that finding, we nevertheless conclude there is substantial evidence to support an implied finding by the court that Mother's relationship with the children was not a beneficial, parental relationship.

The record shows the children had a positive and loving relationship with Mother which they maintained during the dependency cases. The children referred to her as “mommy” and generally enjoyed their visits with her. Nonetheless, likely due to the trauma they suffered and Mother’s failure to adequately protect them, the court found that the children did *not* have a “healthy, good relationship” with Mother. And because the children were dependents of the court and out of Mother’s care for most of their lives, the court reasonably could find that they looked to their caregivers, and not Mother, for their physical and emotional needs for care, comfort, safety, and stability. Given these findings (both express and implied), the court reasonably could find that Mother’s relationship with the children was not parental in nature, but instead one of a friendly visitor or friendly nonparent relative. (Cf. *Angel B.*, *supra*, 97 Cal.App.4th at p. 468; *Beatrice M.*, *supra*, 29 Cal.App.4th at pp. 1418-1419.)

Based on our review of the record, there is substantial evidence to support a finding by the court that Mother did not have a beneficial, parental relationship with the children. Although Mother cites evidence or inferences therefrom that would have supported a contrary finding, we are required to disregard these contrary findings under the applicable substantial evidence standard of review. (*S.B.*, *supra*, 164 Cal.App.4th at pp. 297-298; *Casey D.*, *supra*, 70 Cal.App.4th at p. 53; *In re F.S.* (2016) 243 Cal.App.4th 799, 813.)

In any event, assuming *arguendo* that Mother had a beneficial, parental relationship with the children, Mother has not carried her burden on appeal to show that the court abused its discretion by finding that the benefits to the children of adoption outweighed the benefits to them of maintaining their relationship with Mother. (§ 366.26, subd. (c)(1)(B)(i); *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575 [parent must show parent-child

relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents”].) Although Mother and the children had a loving relationship and close bond, the court reasonably could conclude that the security and sense of belonging a new adoptive family would give them outweighed the benefits to them of continuing their relationship with Mother. (*Anthony B.*, *supra*, 239 Cal.App.4th at pp. 394-395.) As the Agency explained in its section 366.26 report, “the benefits of a permanent plan of adoption outweigh the benefits of maintaining [the children’s] parental relationships with [Mother and Father].” The Agency noted that the children were in “critical stage[s] [of] their development and deserve[d] a sense of safety and stability to ensure their healthy development. If parental rights are not terminated, the continued instability could exacerbate their behaviors and have a traumatic and lasting effect on their physical, emotional, and cognitive development.” The court did not abuse its discretion in crediting this evidence and finding that the benefits to the children of adoption outweighed the benefits to them of maintaining their relationship with Mother. Mother again refers to evidence or inferences therefrom that would have supported a contrary finding, but we do not reweigh the evidence or substitute our view for that of the trial court under the governing abuse of

discretion standard of review.⁹ (*Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319.)

In sum, the court did not err by finding the beneficial parent-child relationship exception did not apply to preclude the termination of Mother's parental rights. (§ 366.26, subd. (c)(1)(B)(i).)

DISPOSITION

The orders are affirmed.

GUERRERO, J.

WE CONCUR:

AARON, Acting P. J.

IRION, J.

⁹ *In re Amber M.* (2002) 103 Cal.App.4th 681, cited by Mother, is factually inapposite to this case because in that case the children had not spent the majority of their lives out of the mother's care and the mother presented a bonding study and extensive expert testimony showing the strength and quality of the children's relationship with, and primary attachment to, her. (*Id.* at pp. 689-690.) The circumstances in *In re Amber M.* are distinguishable from the evidence in this case and therefore do not persuade us to reach a contrary conclusion.